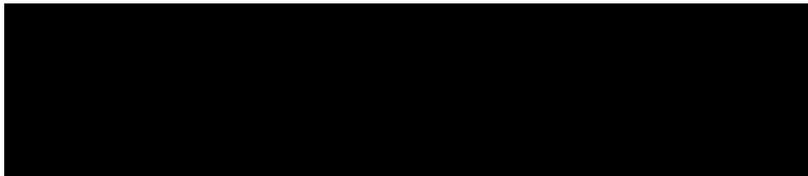




U.S. Citizenship
and Immigration
Services

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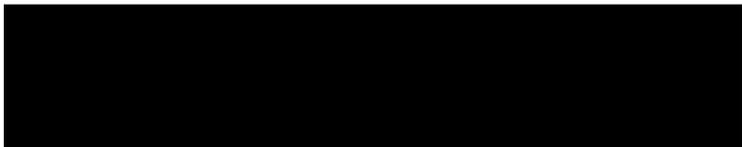
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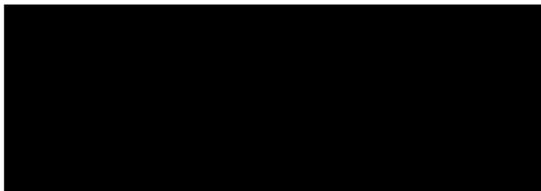
FILE: EAC 06 193 53062 Office: VERMONT SERVICE CENTER Date: **NOV 07 2007**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a non-profit organization that provides counseling services, workshops, and educational services and programs in New York. It seeks to employ the beneficiary as a counselor in its social services program and endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a counselor in its social services program. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would provide education, counseling and therapy to those served by its programs. The services offered by the petitioner were detailed by the petitioner as follows:¹

- 24/7 Crisis Hotline

This is New York City's only bilingual 24 – hour hotline for Korean Americans. Through the hotline the petitioner provides crisis intervention, support, safety planning, and information and referral services;

- Crisis Intervention

The petitioner provides emotional support and direct services for victims of domestic violence during times of crisis. Counselors respond to crisis calls, provide counseling on the spot, and support clients to ensure their safety. Most callers are women, and most often women with children;

- Sexual Assault Intervention

Counselors provide crisis intervention, counseling, support and court accompaniment to women victimized by sexual assault or rape;

¹ The petitioner's web page describes its organization and services it provides: <http://www.kafsc.org/>

- **Batterer Intervention**

These clients are typically men who have been convicted for domestic violence and mandated by the court to receive counseling. Counselors work with them to help to lead violence-free lives;

- **Individual, Couple and Family Counseling**

Counselors meet with clients singly, in couples or together with other family members to provide regular, ongoing counseling assistance. Counselors also provide individual counseling for children and youth. Issues counselors address include family conflicts, peer relationships and problems at school.

- **Legal Advocacy**

Staff and volunteers accompany domestic violence and domestic abuse survivors to court. Assistance is provided with interpretation to obtain orders of protection, child custody, and more. Pro bono legal services are provided to clients by the center for Battered Women's Legal Services of Sanctuary for Families;

- **WISH (Women with Independence, Support and Hope);**

This is a support group of survivors and women at risk that meets monthly to discuss their personal journeys and focus on inner healing, self-awareness, and self-sufficiency. Members of the OTTUKI group for single mothers also participate in WISH activities;

- **The Hodori Club**

This is an after-school and summer program for children who have been identified as needing close attention to prevent their being at-risk. Children receive homework assistance, recreation time, individual counseling and group sessions five days a week after school. Therapeutic, educational and recreational activities are provided to young children ages 6 – 12 with special emotional needs, in after-school sessions during the week and full days during the summer months. Mostly from low-income families and affected by violence in the family, they are provided counseling, ways to improve communication and social skills, develop self-esteem, and develop school and career goals;

- **Youth Community Project Team**

This is a group of over 60 young teens working together on special projects to develop leadership skills and bring positive change to the community, such as services for the elderly. They meet regularly, plan and design their own projects, and carry them out with minimal assistance from staff. They meet regularly to design, develop, and carry out social projects that benefit the community, with minimal assistance from staff;

- **Workshops and Public Education**

Workshops are offered on a broad range of topics related to parenting skills, communication skills, and family dynamics. Public education/outreach includes workshops, speaking engagements and regular articles in the Korean press; and

- Tech Talk

For economic self-reliance and job skill training, basic computer classes and English grammar are taught. These skills are stepping stones toward more advanced training and preparation for employment training.

The petitioner requires a minimum of a bachelor's degree in social work, sociology, art therapy, psychology, education or a related discipline for entry into the proffered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by counselors. Counselors assist people with personal, family, educational, mental health, and career decisions and problems. Their duties depend on the individuals they serve and on the settings in which they work. Counseling professionals may be categorized as: educational; vocational and school counselors; vocational counselors; rehabilitation counselors; mental health counselors; substance abuse and behavioral counselors; and marriage and family therapists. Other counseling specialties include gerontological, multicultural, and genetic counseling. The duties to be performed by the beneficiary in the petitioner's work environment fall within the duties performed by these professionals. The *Handbook* notes that all States require school counselors to hold a State school counseling certificate and to have completed at least some graduate course work; most require the completion of a master's degree. Some States require public school counselors to have both counseling and teaching certification. For counselor's outside of school systems (as in this instance), 48 States and the District of Columbia have some form of counselor licensure that governs their practice of counseling. Requirements typically include completion of a master's degree in counseling, the accumulation of 2 years or 3,000 hours of supervised clinical experience beyond the master's degree level, the passage of a State-recognized exam, adherence to ethical codes and standards, and the completion of annual continuing education requirements. While a master's degree is typically required to be licensed as a counselor, a bachelor's degree often qualifies a person to work as a counseling aide, rehabilitation aide, or social service worker. The proffered position does, therefore, qualify as a specialty occupation as a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the proffered position. The director did not address that issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. The petitioner holds a master's degree in counseling from Nyack College in New York. Nyack College is an accredited institution of higher learning in the United States, and the degree conferred upon the beneficiary by that institution is closely related to the duties of the offered position. The beneficiary is, therefore, qualified to perform the duties of the proffered position based upon her education.

The State of New York requires licensing for: mental health counseling; marriage and family therapy; and psychoanalysis. Until January 1, 2010, however, New York law exempts individuals and programs operated, funded or regulated by the Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, Office of Alcoholism and Substance Abuse Services, Office of Children and Family Services or a local social service district from being licensed.² The petitioner receives public funding for its programs from the New York City Department of Mental Health and the New York State Office of Children and Family Services. As such, the beneficiary is not required to hold a license to work as a counselor in this instance since the licensing exemption date exceeds the dates of intended employment covered by the present petition. The petitioner is qualified to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden and the appeal shall accordingly be sustained.

ORDER: The appeal is sustained. The petition is approved.

² <http://www.op.nysed.gov/mhpques-ans.htm>